Office - Supreme Court, U.S.
FILED
AUG 11 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-240

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

LAWRENCE COUNTY AND THE LAWRENCE COUNTY COMMISSIONERS, *Appellants*

vs.

LEAD-DEADWOOD SCHOOL DISTRICT NO. 40-1, *Appellee*

On Appeal From The Supreme Court Of The State Of South Dakota

BRIEF OF APPELLEE

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August 11, 1984

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QUESTION PRESENTED

1. Whether the Supremacy Clause of the United States Constitution voids the South Dakota statute which distributes federal funds paid to Lawrence County by the Payments in Lieu of Taxes Act.

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BRIEF OF APPELLEE

Lawrence County and the Lawrence County Commissioners have appealed to this Court and ask that the trial court's Findings, Conclusions and Judgment be reinstated. Appellee responds and respectfully prays that the Court affirm the decision of the South Dakota Supreme Court.

Lead-Deadwood School District No. 40-1, Appellee (School District), will accept those portions of Appellant's Brief (Lawrence County) entitled OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED and STATEMENT OF THE CASE except any reference to the proposition that the payments in lieu of taxes are made to defer the costs of providing services for federal lands since there is no evidence in the record that any services are provided by Lawrence County.

SUMMARY OF ARGUMENT

The Payment in Lieu of Taxes Act provides that payments from the federal government are to be made to counties such as Lawrence County. Payments are made to Lawrence County. These payments should be made to Lawrence County.

Local governments in South Dakota are clearly susceptible to state guidance in the management of their fiscal affairs. Title 7, South Dakota Codified Laws, and Article IX, Section I of the South Dakota Constitution.

The federal statute defines the point of distribution of the funds; the state statute delineates the plan for distribution of the funds in a prudent, equitable and needy fashion.

ARGUMENT

I. The Supremacy Clause does not prohibit state regulation in areas dealt with by federal legislation and regulation.

The Supremacy Clause is a very practical and necessary part of the United States Constitution. Although rather simple in wording, the exact meaning of this clause has raised many questions. These questions began even before the Constitution was adopted. To allay fears about the potential abuse within the words of this phrase, Alexander Hamilton, in *Federalist No. 33*, discussed the necessity of the inclusion of the Supremacy Clause:

> Hence we perceive that the clause which declares the supremacy of the laws of the Union. . . only declares a truth which flows immediately and necessarily from the institution of a federal government.

Since that time, however, this area of the law has required extensive effort by the federal judiciary to achieve the proper relationship between federal and state statutes which regulate the same areas of conduct. Legislation by the federal and state governments in the same area does not necessarily mean that the state law must give way under the Supremacy Clause:

> Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found "where compliance with both federal and state regulations is a physical impossibility. . . ," ***Florida Lime & Avocado Growers, Inc.***

vs. Paul, 373 U.S. 132, 142-143, 10 L.Ed.2d 248, 83 S.Ct. 1210 (1963), or where the state "law stands as an absolute obstacle to the accomplishment and execution of the full purposes and objections of Congress." *Hines vs. Davidowitz*, 312 U.S. 52, 67, 85 L.Ed.2d 581, 61 U.S. 399 (1941); *Jones vs. Rath Packing Co.*, 430 U.S. 519, 526, 540-541, 51 L.Ed.2d 604, 97 S.Ct. 1305 (1977), Accord *Decanas vs. Bica*, 424, U.S. 351, 363, 47 L.Ed.2d 43, 96 S.Ct. 933 (1976). *Ray vs. Atlantic Richfield Co.*, 435 U.S. 151, 158, 55 L.Ed.2d 179, 98 S.Ct. 988 (1978).

Obviously the Supremacy Clause does not prohibit state regulation in areas dealt with by federal legislation and regulation. *Hancock vs. Train*, 426 U.S. 167, 179-180, 48 L.Ed.2d 555, 96 S.Ct. 2006 (1976). Because the nullification of state laws under the Supremacy Clause of the United States Constitution is an extreme action by the Court, conflict between federal and state laws should not be sought where none exists. *Exxon Corp. vs. Governor of Maryland*, 437 U.S. 117, 130, 57 L.Ed.2d 91, 98 S.Ct. 2207 (1978). See also *Seagram & Sons, Inc. vs. Hostetter*, 384 U.S. 35, 16 L.Ed.2d 336, 86 S.Ct. 1254 (1966). The "absolute obstacle" and "physical impossibility" tests set forth above have not been met.

There is no doubt that the federal statutes are paramount in the area of payments in lieu of taxes under the program established by P.L. 94-565: The land is federal land and the payments are federal funds. However, state legislation in the area is possible when such laws are not in conflict or do not burden the federal enactments. A common sense reading of the federal and state statutes in question gives meaning to both statutes without destroying the original purpose of the federal law. In fact, the state law simply implements the federal purpose. As this Court held in *Florida Lime & Avocado Growers,*

Inc. vs. Paul, 373 U.S. 132, 142, 10 L.Ed.2d 248, 83 S.Ct. 1210 (1963) *reh. denied*, 374 U.S. 858, 10 L.Ed.2d 1082, 83 S.Ct. 1861 (1964):

> The test of whether both federal and state regulations may operate or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.

Several factors support the School District's contention that its common sense approach to this problem should be adopted by this Court in determining the issue presented.

Soon after the passage of SDCL 5-11-6 several questions were asked of the Attorney General of South Dakota concerning the applicability of SDCL 5-11-6 to P.L. 94-565 funds received by the counties. In answer to the question of the applicability of SDCL 5-11-6 when P.L. 94-565 specifically directs the payments to a general purpose unit of government, the Attorney General of South Dakota stated, in part, that

> These statutory provisions, however, do not make it unlawful or inappropriate for the state legislature to require that such funds to be utilized in a manner similar to any other tax monies raised by the county. Absent federal restrictions on the use of these funds for school purposes, these funds can be used for legitimate governmental purposes such as schools. *Kendall vs. Towns County*, 247 S.E.2d 577 (1978). AGR 80-12, P.3.

The issue presented in this action also requires a discussion of the relationship between the State of South Dakota and the several counties of the state. Article IX, Section 1 of the South

Dakota Constitution states, in part, that "the Legislature shall have plenary powers to organize and classify units of local government..." In Title 7 of the South Dakota Codified laws, the State Legislature has not only set the county boundaries and established county officers and their duties, but has also set forth a wide range of laws governing general county government. In addition to this development of county government, the State Legislature has also, in Chapter 10-12 of the South Dakota Codified Laws, established statutory guides for state and local (meaning counties and municipalities) property tax levies. Having followed these state statutory guidelines in setting tax rates and determining the distribution scheme of their normal tax revenues, it is incongruous for Lawrence County to now say that federal funds they receive *in lieu of these same taxes* are not required to be distributed, in accordance with state law in the same manner as other tax revenues are distributed. As political subdivisions of the state, the counties are clearly susceptible to state guidance in the management of their fiscal affairs. SDCL 5-11-6 is state guidance to the counties for payments they receive in lieu of taxes. Combining this state-county relationship, then, with the compatible reading of SDCL 5-11-6 and P.L. 94-565 helps to show the fallacy of Lawrence County's claim.

To stretch the meaning of the phrase "for any governmental purpose," as Lawrence County suggests, is incorrect. The design behind the inclusion of the phrase "for any governmental" purpose in P.L. 94-565 is to eliminate the restrictions on the money's use. Under many federal funding programs, the money funneled to the state or county can be used only for roads, schools or other specified uses. The questioned phrase in P.L. 94-565 simply eliminates these restrictions.

The reserved powers of the states are not superceded by federal legislation unless there is a clear and manifest intent of

congress. *Chicago and N.W.T.R. Co. vs. Kalo Brick and Tile Company*, 450 U.S. 311, 67 L.Ed.2d 258, 101 S.Ct. 1124 (1981); *Ray vs. Atlantic Richfield Co.*, 435 U.S. 151, 55 L.Ed.2d 179, 98 S.Ct. 1988 (1978); *Rice vs. Santa Fe Elevator Corp.*, 331 U.S. 218, 91 L.Ed.2d 1447, 67 S.Ct. 1146 (1947).

The School District seriously questions the applicability of either *Kendall vs. Towns County*, 247 S.E.2d 577 (GA 1978) or *Meade Township vs. Andrus*, 695 F2d 1006 (6th Civ. 1982). Both of these decisions have been previously cited by Lawrence County to support their claims concerning P.L. 94-565. Neither provides such support. In *Kendall*, the Court stated:

> Since under the law as written, it is provided that the funds may be used for any governmental purpose, the Secretary recognized the "limitations cannot be placed upon the use of these funds by regulations." Thus, in dispensing the funds there are no provisions in the regulations stating how the funds are to be used. *Kendall, supra* at 579.

This excerpt actually supports the School District's basic contention. According to *Kendall*, the Secretary of the Interior cannot, by regulation, require that the P.L. 94-565 funds be used to support only schools, only roads, or only rural sewage systems. This reading is argument that P.L. 94-565 funds are to be used to provide support, in the same manner as regular tax revenues provide support, of all the governmental services supplied by the county.

Meade Township, supra, discusses the question of the proper unit of local government to receive, directly from the federal government, the P.L. 94-565 monies. Because of the importance of townships in Michigan, the federal trial court ordered the Secretary of the Interior to restudy the validity of

his determination that the county is the proper unit of local government in Michigan. The question presented in the present action is not addressed in *Meade Township*. The School District does not question the propriety of the county as the unit of government in South Dakota which should initially receive the P.L. 94-565 funds.

Similarly the reliance upon *New Mexico vs. Mescalero Apache Tribe*, __U.S.__, 103 S.Ct. 2378 (1983) is misplaced. This Court has a continuous line of decisions concerning tribal sovereignty. County governments are not sovereignties but are creatures of the legislature. Article IX, Section 1 of the South Dakota Constitution.

Lawrence County's reliance upon *Altus-Denning School District No. 31, et al vs. Franklin County, et al,* 568 Fed. Supp. 95, (WD Ark. 1983) is also misplaced. Lawrence County continues throughout its Appellant's Brief to misdirect the Court's attention away from SDCL 5-11-6 to the proposition that the School District is asking that they be an eligible recipient of Section One Payments. In *Altus-Denning School District No. 31,* the secretaries regulation expressly excluded school districts from the list of eligible recipient of Section One payments. The School District has never asked or prayed for the proposition that they be the direct recipient of Section One payments. In fact, the Court in *Altus-Denning School District No. 31,* specifically acknowledged that "Congress no doubt intended for sum of the in lieu of tax funds to go to school districts,". (568 Fed. Supp. at 101)

Lawrence County also relies upon *Hisquierdo vs. Hisquierdo,* 439 U.S. 572 (1979). This Court in interpreting the Railroad Retirement Act stated that (439 US at 592):

> The critical terms here include a specific beneficiary protected by flat prohibition against attachment and anticipation.

Anti attachment provisions insure that the benefits actually reach the beneficiary. *Philpott vs. Essex County Welfare Board,* 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973). There is nothing in this Act that precludes the county from distributing monies paid under the Act to school districts, or distributing these monies for any other governmental purpose.

II. The South Dakota Supreme Court properly looked at the clear wording of the Act.

Resort to legislative history is justified only when legislation is ambiguous or its literal meaning is absurd or unreasonable. The South Dakota Supreme Court concluded that "the scrivenerous of 31 USC Section 6901 wrote in plain, common, clear and rational language. We therefore need not look to legislative history." 334 NW2d at 25; See also *Tennessee Valley Authority vs. Hill,* 437 U.S. 153, 184 n. 29, 98 S.Ct. 2279, 2296-97 n. 29, 57 L.Ed.2d 117 (1978), and cases cited therein.

It is not relevant that school districts are eligible for Section Three monies under the Act or that they receive other monies under other federal acts. The real question is does the statute preclude counties from distributing Section One monies to school districts. The Act is clear. There is no restriction on the county. *Altus-Denning School District No. 31, et al vs. Franklin County, et al,* 568 Fed. Supp. 95, 101 (WD Ark. 1983)

III. SDCL 5-11-6 does not conflict directly with the Act.

First, School District wishes to reiterate by reference the arguments contained in its Supremacy Clause arguments found in I.

Lawrence County relies heavily upon *Altus-Denning, Shepard vs. Goodwin,* 280 Fed. Supp. 869 (E. D. Va. 1968) and *Hergenreter vs. Hayden,* 295 Fed. Supp. 251 (D. Kan. 1968).

The district court in *Shepard* held that (280 Fed. Supp. at 874):

> The Act makes these propositions clear: (1) The federal funds are exclusively for supplementation of the local sources of revenues for school purposes; and (2) the Act was not intended to lessen the efforts of the state.
>
> Further at 874, the court goes on:
>
> The (legislative history) underscores the Congressional mandate that the impact payments are for local use and are not to be applied to compensate the State in any respect.

In *Shepard* the district court was interpreting Public Law 874 codified at 20 USC Section 236 et. seq. (Supp. 1967). The statute, as the court found, made it clear that the payments under this Act were not to be applied to compensate the state in any respect. The Act itself clearly, and the congressional history clearly, forbade the state of Virginia to reduce their state aid for education by these federal payments. This is quite different and totally distinguishable from the Act now before the Court.

Nowhere in the Act is the county precluded from giving school districts their proportionate share of each payment dollar. Nowhere in the Act or its legislative history is there any reference to restricting or forbidding the county from complying with SDCL 5-11-6.

The district court in *Hergentreter* interpreted the same statute, i.e. 20 USC Section 236 et. seq.. Under the Kansas School Foundation Act the state was required to deduct 25% of the total amount of the federal funds received from state aid received by a school district. The district court found, as the district court in *Shepard* found, that the Act, P.L. 874 makes it abundantly clear that the state is to have no control over these funds. The Kansas district court reaffirms the proposition that congress was clear as to the involvement of the state concerning these funds.

That is not true of the Payment In Lieu Of Taxes Act, 31 USC Section 6901, 6902 and 6903.

All SDCL 5-11-6 does is direct the county to expend its Section One payments with "prudence, equity and eye to the obvious needs of the school district." *Altus-Denning School District No. 31 vs. Franklin County,* 568 Fed. Supp. 95, 102 (W.D. Ark. 1983)

Conclusion

The federal program under the Payment In Lieu Of Taxes Act, 31 USC Section 6901 et. seq. which makes payments to counties in lieu of taxes for federal lands within the counties and the state statutes which provide for the distribution of these federal payments in the same manner as taxes are distributed are totally compatible. When read with a common sense ap-

proach, the two Acts are not only compatible, but also practical. The federal statute defines the point of distribution of the funds; the state statute delineates the plan for distribution of the funds in a prudent, equitable and needy fashion.

Based on the foregoing arguments and authority, the Supreme Court of the United States should enter its order affirming the decision of the South Dakota Supreme Court found at 348 NW2d 24 (SD 1983).

Respectfully submitted,

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August 11, 1984